

REMARKS

This communication is in response to the non-final Office Action that issued May 13, 2011. Claims 9, 11, 13 and 44-52 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 7,527,633 (“the ‘633 patent”) in view of U.S. Patent No. 6,723,107 (“the ‘107 patent”) and U.S. Patent Application Publication No. 2002/0099259 (“the ‘259 publication”). No claims have been amended or canceled.

Claim Rejections - 35 USC 103

The Examiner rejected claims 9, 11, 13 and 44-52 under 35 U.S.C. § 103(a) as allegedly being obvious over the ‘633 patent in view of the ‘107 patent and the ‘259 publication. This rejection is respectfully traversed.

Independent claim 9 requires, *inter alia*, that “the first and second legs join at an inside corner having a first shape and an outside corner having a second shape...” An exemplary disclosure of the first and second shapes of the inside and outside corners is set forth in Figure 27 reproduced below.

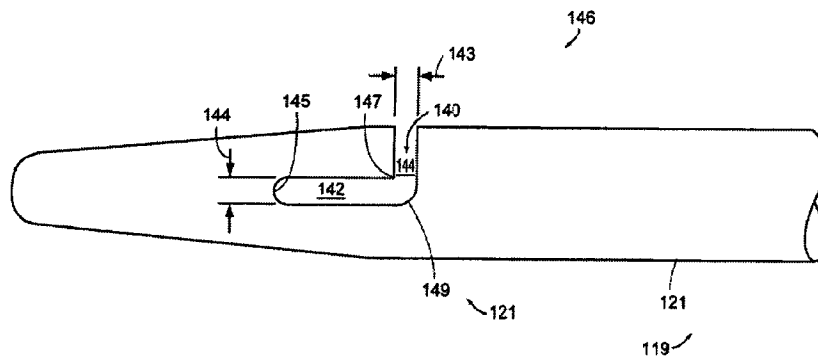


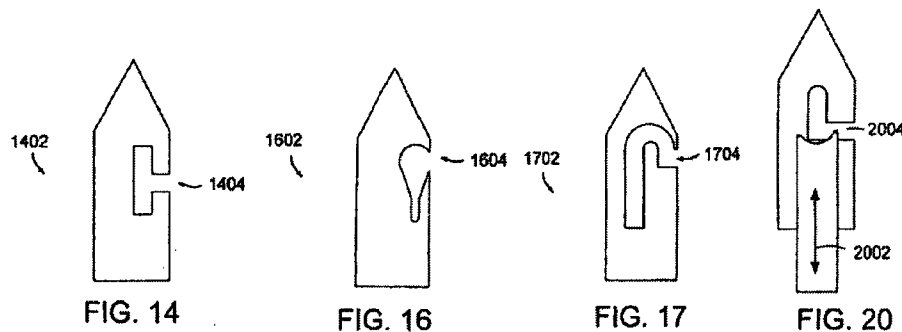
FIG. 27

From this figure, features 147 and 149 are representative examples of the first and second shapes required by claim 9.

In the rejection, the Examiner conceded that that both the '633 patent and the '259 publication do not disclose the differing shape limitations required between the inside and outside corners. The Examiner attempted to cure this deficiency by stating that:

Skiba [the '107 patent] teaches using curved and not curved corners in the embodiments shown in Fig. 16 (curved/not curved), Fig. 17 (curved) and Figs. 14 and 20 (not curved), Skiba specifies a curved configuration aids in trapping a suture (col. 4, ll.38). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the embodiments of Skiba to have one corner curved and the other corner not curved as this aids in placement of the loop and using the device.

The figures referenced by the Examiner in the '107 patent are as follows:



From a brief review of the alleged inside and outside corners in these figures, it is evident that none of them disclose curved and non-curved corners in the same embodiment. Recognizing this deficiency, the Examiner asserted that the disclosure at column 4, line 38 suggests that a curved configuration aids in trapping a suture. And, that this disclosure would make it obvious to create a single embodiment possessing curved and non-curved corners. This assertion, however, cuts against itself. Instead of motivating one of ordinary skill in the art to combine curved and non-curved corners in a single embodiment, it teaches away from their combination. For example, under the Examiner's logic, the disclosure at column 4, line 38 suggests that curved corners aid in trapping a suture and including them in an embodiment would further this goal. In practical terms, this would mean that the most ideal devices for trapping sutures would have only curved

corners and would have no non-curved corners. Therefore, because one of ordinary skill in the art would be motivated to create a device to trap a suture, they would be dissuaded from including non-curved corners in any such device as they would not trap a suture as effectively. As a result, the embodiment of claim 9 would not be obvious to one of ordinary skill in the art.

Therefore, because the '107 patent does not disclose an embodiment having curved and non-curved corners and the Examiner conceded that neither the '633 patent nor the '259 publication disclose this limitation either, a *prima facie* case of obviousness has not been set forth for independent claim 9. The same holds true for claims 11, 13 and 44-52 that depend either directly or indirectly from claim 9

Thus, the Examiner's rejection under 35 U.S.C. § 103(a) of claims 9, 11, 13 and 44-52 are believed to be overcome. It is, therefore, respectfully requested that the Examiner withdraw this rejection.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is respectfully requested.


In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the Examiner would contact the undersigned attorney by telephone at (202) 373-6000 so that prosecution of the application may be expedited.

The Director is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4047.

Respectfully submitted,

BINGHAM MCCUTCHEN, LLP

Date: August 3, 2011

By: 
Matthew L. Fedowitz
Registration No. 61,386

BINGHAM MCCUTCHEN, LLP
2020 K Street, NW
Washington, DC 20006
Telephone: (202) 373-6000
Facsimile: (202) 373-6001